

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WA No.2080 of 2018

and CMP No.16364 of 2018

1. The Managing Director,
Tamil Nadu State Transport Corporation
(Villupuram Division-3),
Kancheepuram - 631 503.

.. Appellant

versus

1. K.Sankaran (died)
2. Smt.Shanthi
3. S.Velan
4. Smt.Vijayalakshmi
5. Smt.Radha
6. Smt.Revathi

2. The Presiding Officer,
I Addl Labour Court,
High Court Compound,
Chennai - 600 104.

... Respondents

[Respondents 2 to 6 brought on record as LRs of the deceased R1 viz., K.Sankaran vide Court order dated 23.08.2018 made in CMP No.14667/2018 in WA Sr.No.77205/2014 (SMKJ & SPJ)]

Writ Appeal filed against the order dated 12.08.2013 made in WP No.46439 of 2002.

Prayer in WP.No.46439 of 2002:Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorari, to call for the records from the files of the first Respondent in I.D.No.679 of 1997 and quash the impugned award passed therein dated 18.07.2000 in so far as it has denied and negatived the claim of the petitioner for reinstatement in service, with continuity of service with back wages and with all other attendant and consequential benefits.

For Appellant : Mr.S.Sairam
for Mr.P.Paramasivadass

For Respondents: Mr.K.M.Ramesh (for R1 to R6)

JUDGMENT

(Order of the Court was delivered by SUBRAMONIUM PRASAD, J)

The instant writ appeal is directed against the judgment and order dated 12.08.2013, passed in WP No.46439 of 2002.

2. The first respondent was working as a Conductor with the petitioner Corporation. First Respondent did not report for duty from 25.10.1994 to 23.11.1994. On 23.11.1994, first respondent was charge sheeted and domestic enquiry was conducted. The enquiry ended against the first respondent. The petitioner Corporation dismissed the first respondent from service on 06.12.1996, on account of charges, proved in the domestic enquiry. Since no opportunity of personal hearing was provided, the first respondent challenged the order of dismissal, by filing a claim petition, before the Assistant Commissioner of Labour, 2nd respondent. Before the Labour Court, the petitioner Corporation also relied on various misconducts alleged to have been committed by the first respondent herein viz., stopping of bus in inappropriate places, unauthorised absence and delay in intimation about the defects in the vehicle. It was argued that despite the fact that he had been warned several times, he had not rectified himself.

3. The Labour Court came to the conclusion that the past record of the petitioner, was not very good. The order of dismissal has been passed on the basis of the enquiry conducted, as per the principles of natural justice. Labour Court, therefore, affirmed the punishment.

4. The workman challenged the order of Labour Court by filing W.P.No.46439 of 2002. The learned Single Judge after considering the material, came to the following conclusion.

"8. From the above discussions, this Court is of the view that :-

(i) the petitioner was dismissed from service for the reason of his unauthorized absence without prior intimation from 06.12.1996 and that his dismissal was associated with the previous domestic inquiry which is pertaining to unauthorized absence from 25.10.1994 to 23.11.1994. Hence, the Management / second respondent herein ought to have conducted a domestic inquiry after issuing a show cause notice and after obtaining an explanation from the petitioner and only after finding the explanation not satisfactory, only then the Management could have passed appropriate order. But, in this case, the second respondent herein had not followed, an ethical procedure since the petitioner was

considered on unauthorized absence from 06.12.1996 and therefore, the impugned order of dismissal from service dated 25.01.1997 is not sustainable as per law since no opportunity was provided to the petitioner to explain his absence from duty from 06.12.1996. Therefore, this Court is of the view that the petitioner's fundamental and personal rights has been affected. As such, the impugned order of the second respondent is against the principles of natural justice.

(ii) as per the affidavit of the petitioner it is seen that the petitioner is now aged over 63 years and as such, he has crossed the superannuation retirement and therefore, reinstatement could not be granted.

(iii) The petitioner is not entitled to get full back-wages, continuity of service and other attendant benefits, since the petitioner was warned on 7 occasions and out of the 16 charges framed against him, it is seen that he was imposed penalty on five different occasions and his increment was postponed for six months on three occasions.

(iv) However, the petitioner is a permanent employee and he was not given an opportunity to give his explanation, before his dismissal from service due to unauthorized absence from 06.12.1996. Without obtaining an explanation and without a Departmental inquiry, the dismissal from service is too harsh. Under the circumstances, this Court is inclined to grant an alternative remedy to the petitioner and as such, this Court is inclined to grant relief to the petitioner and holds that he is entitled to receive a minimum of 25% in back-wages from the date of dismissal till the date of his superannuation period, in the interest of justice and equity."

5. A perusal of paragraph quoted above would show that the petitioner had attained the age of superannuation during the pendency of the writ petition and therefore, the learned Single Judge has rightly held that the prayer for reinstatement could not be granted. Learned Single Judge further directed the petitioner Corporation to pay 25% backwages, from the date of dismissal till the date of superannuation. It is this order, which is under challenged in the present writ appeal.

6. Heard the learned counsel for the parties and perused the materials available on record.

7. First respondent/workman passed away on 14.07.2017 i.e., after the order of the writ Court. The legal representatives of the first respondent (since deceased) have filed applications to bring themselves on record, condoning the delay and set aside abatement. The said applications were allowed by an order dated 23.08.2018 and the legal representatives of the deceased first respondent were brought on record.

8. It is well settled that if past conduct is the basis of an order of termination, then, the said past conduct should be put on notice to the workman in the domestic enquiry, which is conducted. The past conduct cannot be made a basis of the termination, when it is not a part of the charge sheet.

9. Further, it would be unfair to the employee, if his past conduct on which no explanation has been sought for in the domestic enquiry, is made the basis of the order of his termination. This would be against the principles of natural justice. Past conduct may be taken for the purpose of reduction in punishment, as has been held by the Hon'ble Supreme Court in a catena of judgments, but, it cannot be considered to cement the order of dismissal of service.

10. We do not find any infirmity with the order of the learned Single Judge in directing payment of 25% backwages from the date of termination till the date of superannuation, more so, since the first respondent is no more.

11. In the light of the above, writ appeal fails and dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

12. Mr.S.Sairam, learned counsel for Tamil Nadu State Transport Corporation (Villupuram Division-3), Kancheepuram submitted that Contempt Application is pending. He further submitted that two months time is required to comply with the order made in WP.No.46439 of 2002 dated 12.08.2013.

13. Placing on record the above submission, two months time is granted from today, to settle 25% of the backwages to the legal representatives of the deceased, impleaded as per the order made in CMP No.14667/2018 in WA Sr.No.77205/2014 dated 23.08.2018, and also the terminal benefits.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ars

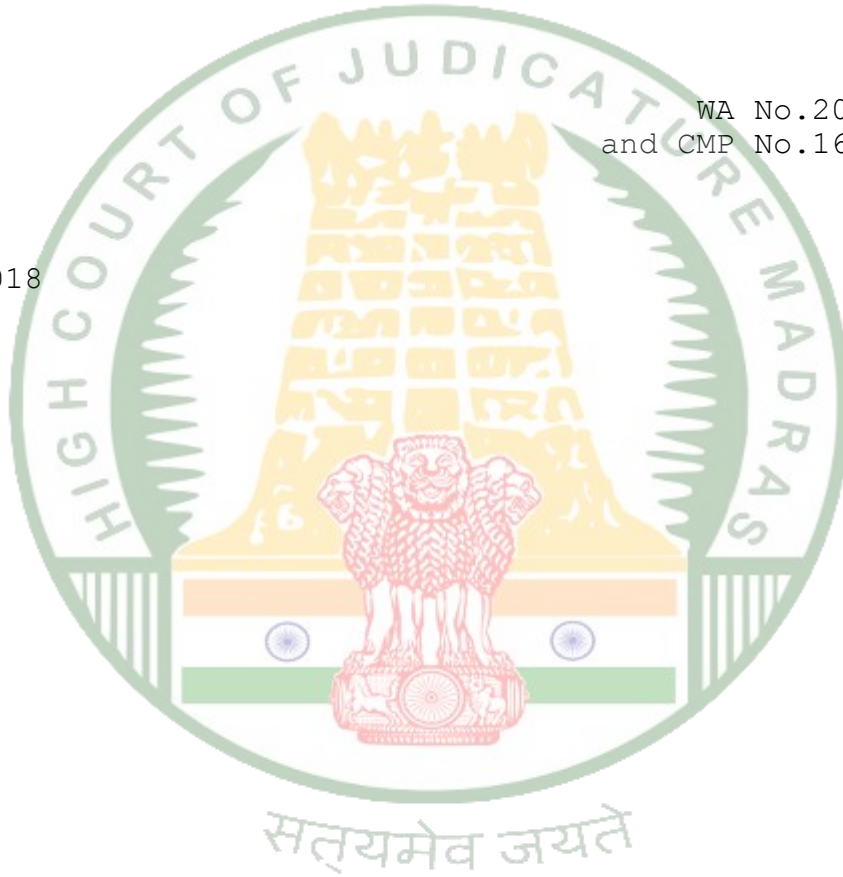
To

The Presiding Officer,
I Addl Labour Court,
High Court Compound,
Chennai - 600 104.

+1 cc to Mr.K.M.Ramesh Advocate sr 64100

WA No.2080 of 2018
and CMP No.16364 of 2018

aa15/10/2018



WEB COPY